

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ENVIRONMENTAL QUALITY BOARD

In the Matter of Xcel Energy's Application
to the Minnesota Environmental Quality
Board for a Route Permit for a 345 kV
Transmission Line from the Split Rock
Substation to Lakefield Junction
Substation and a 115 kV Transmission
Line from Nobles County Substation to
Chanarambie Substation and the Nobles
County Substation

ORDER DENYING
INTERVENTION

Hearings in this matter were held on March 1, 2, 3 and 4, 2005, at various locations in Southwestern Minnesota. At the close of the afternoon hearing on March 1, a Petition to Intervene was filed by Public Intervenors Network ("PIN"). Copies of the Petition were distributed to the Administrative Law Judge, Xcel Energy, and Board Staff. On March 2, 2005, copies were emailed to all parties.

On March 2, 2005, Xcel Energy filed an Objection to the Petition by handing it to the Administrative Law Judge and the Board Staff, and emailing it to PIN.

On March 2, 2005, PIN filed a reply to the Objection, emailing it to the Administrative Law Judge and all parties.

On the morning of March 3, 2005, the Administrative Law Judge emailed all parties an advance notice of his ruling that the Petition would be denied. He indicated that a formal Order would be prepared at a later time.

PIN was represented by Carol A. Overland, Attorney at Law, 402 Washington St. So., Northfield, MN 55057.

Northern States Power Company d/b/a Xcel Energy was represented by Michael C. Krikava and Lisa M. Agrimonti, from the firm of Briggs and Morgan, 2200 IDS Center, Minneapolis, MN 55402.

Based upon all of the files and proceedings herein, and for the reasons set forth in the attached Memorandum which is incorporated herein, the Administrative Law Judge makes the following:

ORDER

That the Petition of Public Intervenors Network to intervene in this proceeding is DENIED.

Dated this 16th day of March 2005.

/s/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

MEMORANDUM

Minn. Rule pt. 1405.0900 provides, in relevant part, as follows:

Subpart 1. Petition. Any person desiring to intervene in the hearings as a party shall submit a timely Petition to Intervene ... Timeliness will be determined by the Administrative Law Judge in each case based on circumstances at the time of filing. The Petition shall show the Petitioner's legal rights, duties, or privileges may be determined or affected by the proceedings, how those rights, duties and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought...

Subpart 2. Objection. Any party may object to the Petition ... the notice shall state the party's reasons for objecting...

Subpart 3. Order. The Administrative Law Judge shall allow intervention upon a proper showing pursuant to subpart 1 unless the Administrative Law Judge finds that the Petitioner's interest is adequately represented by one or more parties participating in the case.

In the case of PIN's Petition, the Petition must be denied for two reasons: It is untimely, and it does not meet the standards set forth in Minn. Rule pt. 1405.0900, subp. 1.

PIN has been aware of this proceeding for months prior to the hearing. On May 13, 2004, Xcel sent PIN's attorney a copy of its notice of filing the route permit application.^[1] In January of 2005, she was served with a Notice of Draft EIS Availability and Prehearing Draft EIS Information Meetings.^[2] In January of 2005, she also was

served with the Notice of Hearings and EIS Availability, which indicated that persons desiring to intervene should file a Petition to Intervene by February 4.

During the spring and summer of 2002, PIN was actively involved in the Certificate of Need proceedings for this line and three other lines. It had intervened in that proceeding in a timely manner, and participated by sponsoring witnesses, cross-examining other parties' witnesses, and presenting argument to the Administrative Law Judge. PIN has also participated in the Arrowhead Transmission Line proceedings in Minnesota and Wisconsin, the Chisago Transmission Line proceedings in Minnesota and Wisconsin, and in the Florence Township Nuclear Waste Permitting proceedings in Minnesota and before the Federal Nuclear Regulatory Commission. In short, PIN is no stranger to energy regulatory proceedings, and knows how to intervene in a timely fashion. But in this proceeding, PIN's Petition was not timely filed.

In addition to being untimely, the Petition also failed to demonstrate how PIN's legal rights, duties, or privileges would be determined or affected by the proceedings. The Petition did list the issues that PIN hoped to discuss, and did demonstrate that none of the other intervenors appeared to be prepared to discuss them. However, the Petition failed to demonstrate that PIN (or its members) had any interest in the proceeding that could not be met by its participation as a non-party.

The routing of power lines and the siting of power plants have a unique place in Minnesota administrative law. Not only do the statutes and case law recognize this, but these proceedings have their own set of procedural rules (Chapter 1405). In response to a legislative directive that the procedural rules "shall attempt to maximize citizen participation in these processes consistent with the time limits for Board decision ...,"^[3] the procedural rules make every effort to allow persons to participate without the necessity of intervening as parties.^[4] For example, the rules allow any person to offer direct testimony without the necessity of prefiling, to file written statements and exhibits, and, most importantly, to question all persons testifying. The rules further provide that all witnesses who offer prefiled direct testimony must be available for questioning by any interested person at each hearing date and place, thereby assuring witness availability for any person (regardless of whether they are a party or not) to question them.^[5] The rule also requires that the parties who are proposing a route or site must prefile all of their direct testimony in advance and place a copy in local library or other public places 14 days prior to the first hearing date.^[6] As a practical matter, therefore, PIN was able to cross-examine witnesses and participate in the hearings to the extent that it desired. It was able to cross-examine non-Xcel witnesses on the first day of the hearing, and on the third day of the hearing, it was allowed to cross-examine Xcel Energy witnesses (and a GRE witness) for as long as it chose to do so.^[7] PIN also submitted exhibits which were received into the record. PIN was also allowed to address the audience on an issue that was beyond the scope of the hearing, the "buy the farm" provisions of Minn. Stat. § 116C.63, subd. 4. In allowing Ms. Overland to do this, the Administrative Law Judge asked her to "keep it short" and she did so.^[8] While PIN did not offer any direct testimony of its own to "connect the dots" in the various exhibits which it entered into the record, the Administrative Law Judge fully expects that

PIN will submit a post-hearing letter explaining the exhibits and relating them to the statutory and rule standards which guide the route selection process.

Finally, one of the few remaining benefits of full party status is the right to conduct prehearing discovery. But discovery, as a practical matter, would not have been feasible given the lateness of PIN's intervention in this case. PIN acknowledged this lateness and offered to forego discovery.^[9]

In summary, PIN's Petition was not timely, and it failed to demonstrate how PIN's (or its members') legal rights, duties or privileges would be affected by the proceeding. Therefore, the Petition is denied.

A.W.K.

^[1] Ex. 7.

^[2] Ex. 35.

^[3] Minn. Stat. § 116C.66.

^[4] Minn. Rule pt. 1405.0800.

^[5] Minn. Rule pt. 1405.2000.

^[6] Minn. Rule pt. 1405.1900.

^[7] T., Vol. 6, p. 535.

^[8] T., Vol. 1, p. 87.

^[9] PIN Reply to NSP's Opposition to PIN's Petition to Intervene, p. 3.